FILE COPY

DEC

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1931.

No. 568.

UNITED STATES OF AMERICA,

*v.*

SWIFT & COMPANY, ET AL.

No. 569.

AMERICAN WHOLESALE GROCERS ASSOCIATION,

*v.*

SWIFT & COMPANY, ET AL.

No. 570.

NATIONAL WHOLESALE GROCERS ASSOCIATION,

*v.*

SWIFT & COMPANY, ET AL.

## Statement Under Rule 12, Paragraph 1, by Intervener-Appellant, National Wholesale Grocers Association of the United States.

WILLIAM C. BREED,
BREED, ABBOTT & MORGAN,
*Attorneys for National Wholesale Grocers Association of the United States,*
15 Broad Street,
Borough of Manhattan,
City of New York.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1931.

No. 568.

UNITED STATES OF AMERICA,

*v.*

SWIFT & COMPANY, ET AL.

No. 569.

AMERICAN WHOLESALE GROCERS ASSOCIATION,

*v.*

SWIFT & COMPANY, ET AL.

No. 570.

NATIONAL WHOLESALE GROCERS ASSOCIATION,

*v.*

SWIFT & COMPANY, ET AL.

**Statement Under Rule 12, Paragraph 1, by Intervener-Appellant, National Wholesale Grocers Association of the United States.**

This appeal is taken pursuant to the Expediting Act (U. S. Code, Title 15, Chap. 1, Sec. 29) which provides:

> "In every suit in equity brought in any district court of the United States under any of the laws mentioned in the preceding section,

> wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof."

The "laws mentioned in the preceding section" are U. S. Code, Title 15, Chap. 1, Secs. 1-7, inclusive (Sherman Act), and Sec. 25 (Clayton Act).

The Supreme Court of the District of Columbia is a "district court of the United States" within the meaning of the above-quoted provision.

Swift & Co. v. United States, 276 U. S. 311.

That provision applies with equal force to appeals by interveners as to appeals by the original parties.

U. S. v. California Cooperative Canneries, 279 U. S. 553, 559.

In *Continental Co. v. United States,* 259 U. S. 156, the appeals under the Expediting Act were taken by interveners (See page 164).

By an order of the Supreme Court of the District of Columbia, entered November 5, 1921 (Cumulative* p. 146) National Wholesale Grocers Association of the United States was granted leave to intervene in the above-entitled suit for the purpose and to the extent of being heard

> *"in opposition to any proposed change in the consent decree which would deprive the interveners of the protection now secured by said decree."*

*The Record has not yet been printed. The cumulative page numbers refer to the pages of the Record (partly printed and partly typewritten) transmitted by the clerk of the court below, counting consecutively from p. 1 of the Petition.

Since the granting of said order this intervener has actively cooperated in the Government's efforts to sustain said Consent Decree and to restore it to effective operation. When the question of the validity of the Consent Decree was before this Court (*Swift & Co. v. United States,* 276 U. S. 311), this intervener supported the position of the Government with brief and oral argument and its status as a proper party was not questioned. In the present proceeding this intervener was active in opposing modification of the Consent Decree, and its right to appear and participate as a party litigant was fully recognized by the court below (R. 398, 399, 401, Statement of Evidence, p. 1316).

The Decree appealed from, which was granted upon the petitions of certain of the defendants and *without the consent of the Government,* deprived this intervener of all the protection secured to it by the Consent Decree by permitting the defendants to manufacture, sell and deal in the commodities specified in paragraphs "Fourth" and "Fifth" of the Consent Decree (R. 1650, 1653, 1629).

The Decree sought to be reviewed was entered on the 31st day of January, 1931, and was amended by an order dated February 26, 1931 (R. 1650, 1653).

This intervener's application for the appeal was presented and allowed on the 31st day of March, 1931 (R. 1757, 1758). The citation and acknowledgment of service thereof were filed March 31, 1931 (R. 1760, 1763). Extension of time was granted for docketing the case with the Clerk of this court until December 24, 1931 (R. 1819).

This is a suit in equity brought by the Government against Swift & Co. and other Chicago Meat

Packers under the Anti-Trust Laws and resulted in the entry on February 27, 1920, of a Consent Decree (R. 1, 118), which has heretofore been passed upon by this court and held to be valid and binding (276 U. S. 311; 279 U. S. 553). As already stated, the Decree appealed from materially modified said Consent Decree without the Government's consent and deprived this intervener of the protection secured to it by said Consent Decree.

The following decisions of this court are believed to sustain the jurisdiction of this court:

U. S. v. California Cooperative Canneries, 279 U. S. 553;

Swift & Co. v. U. S., 276 U. S. 311;

Interstate Commerce Commission v. Baird, 194 U. S. 25;

Continental Co. v. U. S., 259 U. S. 156, 164;

U. S. v. International Harvester Co., 274 U. S. 693;

Paramount-Famous Lasky Corp. v. U. S., 282 U. S. 30;

U. S. v. First National Pictures, 282 U. S. 44.

Dated: December 11, 1931.

Respectfully submitted,

WILLIAM C. BREED,
BREED, ABBOTT & MORGAN,
*Attorneys for National Wholesale Grocers Association of the United States,*
15 Broad Street,
Borough of Manhattan,
City of New York.

Service of the foregoing statement is hereby acknowledged this 11th day of December, 1931.

JOHN LORD O'BRIAN,
*The Assistant to the Attorney General Counsel for the United States of America.*

FRANK J. HOGAN, NELSON T. HARTSON,
*Counsel for Swift & Company, et al., and Armour & Company, et al., Appellees.*

EDGAR WATKINS,
*Counsel for American Wholesale Grocers' Association.*